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Attorneys for Plaintiff KATHLEEN HANNI.
Individually and on behalf of all others similarly situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

KATHLEEN HANNI, individually and on)
behalf of all others similarly situated,)

No. C08-00732 CW

Plaintiff,

DECLARATION OF PAUL S. HUDSON IN SUPPORT OF MOTION TO REMAND

V.

AMERICAN AIRLINES, INC.; and DOES 1 through 20, inclusive,

Date: April 24, 2008
Time: 2:00 p.m.
Courtroom: 2

Defendants.

I, Paul S. Hudson, hereby declare:

1. I am an attorney in good standing admitted to practice before all courts in the State of New York and have been so since 1976. I am admitted *pro hac vice* before the Superior Court of Napa County California and have a *pro hac vice* application pending in the US District Court, Northern District of California for the subject case. My address is 4411 Bee Ridge Road #274, Sarasota, Florida 34233. I have personal knowledge of the matters set forth in this declaration, except

1 those facts which are alleged based on information and belief, and as to those facts, I believe them to
2 be true. I could and would testify competently thereto if called as a witness.

3 2. I am an attorney for the Plaintiff and submit this declaration in support of plaintiff's
4 Motion to Remand and in response to the Declaration of James M. Wagstaffe (Wagstaffe Declaration),
5 submitted in support of the Defendant's Notice of Removal dated January 31, 2008.

6 3. I have over 30 years of experience as an attorney, have litigated over 1,000 civil
7 cases. Since 1997 I have concentrated on aviation consumer law and representing airline passenger
8 interests on a national level, including involvement as lead intervenor attorney in a class action case
9 involving facts similar to those in this case. I am a longstanding member, representing the interests of
10 airline passengers and the general public, of the Federal Aviation Administration's Rulemaking
11 Advisory Committee (Executive Committee) and the U.S. Transportation Security Administration's
12 Aviation Security Advisory Committee, have authored articles in professional and general interest
13 publications on aviation consumer issues, and have often been invited to testify before Congressional
14 committees on aviation consumer issues. Most recently, I represent the national consumer
15 organizations as amici/intervenors in the case of *Air Transport Association of America, Inc. v Cuomo*,
16 in which the US District Court ND NY recently upheld a state statute prohibiting the type of conduct
17 at issue in this case, against a federal preemption challenge by the airline industry trade association.

18 4. My fee agreement with the plaintiff in this case is a contingency fee agreement.
19 Accordingly she is not expected to incur hourly attorneys' fees as assumed by the Defendant's
20 consulting attorney James M. Wagstaffe in his Declaration dated January 31, 2008 in support of the
21 Notice of Removal.

22 5. As the Complaint does not specify an amount of damages and Plaintiff has
23 voluntarily limited the amount in controversy for herself to less than the individual jurisdictional
24 amount for individual recovery including attorneys' fees and punitive damages (Hanni
25 Affidavit/Declaration submitted herewith), I do not believe there is any factual basis for federal
26 jurisdiction based on diversity under 28 USC 1332(a), one of two grounds for jurisdiction alleged in
27 the notice of removal.
28

1 6. I disagree with the Wagstaffe Declaration legal opinion at par. 5 that attorney fees
2 are normally included in determining the amount in controversy for jurisdictional purposes (improperly
3 included in his Declaration under local rules) for the reasons set forth in the accompanying
4 Memorandum of Law. In my experience with class action and mass tort cases, attorney fees are
5 usually paid out of a common fund and are normally an expense of the clients, not something added
6 to the recovery and therefore the amount in controversy, whether by judgment or stipulation of
7 settlement. The court will then hold a fairness hearing, and determine if the fees are in the interests
8 of the class and the public.

9 7. Mr. Wagstaffe opines at length as an alleged expert on class actions and aviation law
10 defenses in this case, but his resume attached to his Declaration mentions no class action or aviation
11 law experience, but rather opines that he is a well known First Amendment, federal procedural law
12 expert and public speaker. As such his opinions in my view should be given no evidentiary weight,
13 and should also not be considered as they attempt to usurp the Court's prerogative of deciding legal
14 issues.

15 8. The other ground for removal is that the aggregate amount in controversy exceeds
16 \$5 million and therefore gives this Court original jurisdiction under 28 USC 1332(d). But without
17 knowing with any accuracy the number and citizenship of the putative class, it is not possible to
18 calculate whether or not the amount in controversy for the class will be over or under the minimum
19 \$5 million needed for original jurisdiction by this Court under the Class Action Fairness Act of 2005
20 (CAFA).

21 9. But even if the court takes cognizance of the Wagstaffe estimate of 300 hours at
22 \$350 per hour, this is \$105,000 in attorney fees for a class action, which is a relatively small amount
23 relative to \$5 million, and is therefore unlikely to have a significant effect on the minimum federal
24 class action jurisdictional amount of over \$5 million.

25 10. The number of potential class members is likely to be less than 12,000 based on
26 information learned since the complaint was filed but the number cannot be determined at this time
27 without an order of the court for turnover of the names, addresses etc. because the Defendant
28

1 exclusively controls this information. It is also not possible to determine the state citizenship of the
2 potential class members without this information.

3 11. It is also not possible for the Plaintiff and the court to know for certain whether
4 more than one third of the class members or even over two thirds are citizens of California, which
5 would then involve discretion by this Court (if between one third and two thirds) as to whether to
6 remand to state court or retain jurisdiction, or mandatory remand if over two thirds. 28 USC
7 1332(d)(3)(4). However, it is more likely than not in my opinion that California has over a third of the
8 putative class in this case. This is based on a) the information provided by Plaintiff in her affidavit
9 that a majority of phone numbers of persons who contacted her are from California, based on a web
10 site posting, b) that there are 16 California cities served by American Airlines with flights to Dallas
11 Fort Worth airports according to the Defendant's web site, believed to be more than any other state
12 and c) that California has an estimated 20% to over 35% of the population served by American
13 Airlines, and d) that the time zone differences and the time of day of the diverted flights likely caused
14 more flights from west to east to be diverted on December 29, 2006 than from east to west.

15 12. The data aforementioned in par. 10 above is also needed now because Defendant
16 is expected to shortly move to transfer venue to Texas and is basing this motion at least in part on its
17 allegation that Texas has more class members than another state.

18 13. In the only other similar case that I am aware of, a class action was filed against
19 Northwest Airlines arising out of a stranding and confinement of passengers in Detroit in 1999. That
20 case, *Koczara v Wayne County and Northwest Airlines*, was remanded to state court and settled with
21 payments ranging from \$1,000 to \$2,000 per approved class member claim. The total settlement was
22 \$7.15 million and involved a total class of about 7,000. The amount available to distribute after
23 attorneys fees and expenses was just over \$5 million. See news account affixed hereto as Exhibit A.

24 I declare the foregoing to be true under penalty of perjury. This Declaration was
25 executed on February 28, 2008 at Sarasota, Florida.

26 s/ _____

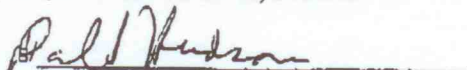
27 Paul S. Hudson
28

Feb-28-08 12:22am From-

T-261 P 003/003 F-570

member claim. The total settlement was \$7.15 million and involved a total class of about 7,000. The amount available to distribute after attorneys fees and expenses was just over \$5 million. See news account affixed hereto as Exhibit A.

I declare the foregoing to be true under penalty of perjury. This Declaration was executed on February 28, 2008 at Sarasota, Florida.

A handwritten signature in cursive script, appearing to read "Paul S. Hudson", is written over a horizontal line.

Paul S. Hudson

Feb-28-08 12:21am From-

T-261 P 002/003 F-570



Northwest To Pay Stranded Travelers

From: AP Online Date: April 24, 2001

AP
Associated Press AP Online
04-24-2001

Northwest To Pay Stranded Travelers

ROMULUS, Mich. (AP) -- A judge on Tuesday approved a \$7.15 million settlement between Northwest Airlines and thousands of passengers who endured lengthy delays during a January 1999 blizzard.

At least 3,700 passengers will get checks averaging \$1,300 in the settlement approved by Wayne County Circuit Judge Daphne Means Curtis. Checks are to be issued by early June.

Northwest officials did not return a phone call seeking comment.

Passengers filed a class-action lawsuit after they were trapped aboard 30 Northwest airplanes at Detroit Metropolitan Airport during a snowstorm Jan. 2-4. The storm prevented planes from taking off or returning to the gates. Toilets overflowed, and planes ran out of food and water.

The airline industry has since adopted a voluntary code of conduct. Northwest now mandates compensation if passengers are delayed more than four hours.

So far, 3,300 passengers claims had been verified, with passengers divided into three categories, said Mary Jane Tytran, of Charfoos & Christensen, a law firm that represented the passengers.

The 1,400 passengers delayed two to five hours will receive an estimated \$1,000; 1,300 delayed five to eight hours will get about \$1,400; and 600 delayed more than eight hours will get about \$2,000, Tytran said.

About 400 claims are awaiting minor corrections and should be approved.

On the Net:

Northwest Airlines, <http://www.nwa.com/> The information contained in the AP News report may not be published, broadcast or redistributed without the prior written authority of The Associated Press.

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Exhibit A